

**District Court of the United States
Massachusetts Division**

Mark Cimini

Petitioner/Plaintiff,

vs.

Margaret Cimini,
Middlesex County Probate & Family Court
Judge Edward F. Donnelly,
Massachusetts Supreme Judicial Court
Judge J. Ireland,
Commonwealth of Massachusetts
Respondent(s)/Defendant

CASE No.

97D-4115-DV1,
SJ-2004-0462

**COMPLAINT IN THE NATURE OF A
PETITION FOR A WRIT OF
MANDAMUS
AND TO INVOKE THE GENERAL
SUPERINTENDENCE OF THE COURT**

Preliminary Statement

Comes now the Petitioner in this matter, Mark Cimini, Pro Se/In Propria Persona¹, Sui Juris,/non-attorney the accused and greatly aggrieved party in this matter and moves for intervention by this court for a Mandamus to the Massachusetts courts to answer an 'Order to Show Cause'.

Background

- 1.) Your Petitioner has asked the Commonwealth courts for actions in agreement with Commonwealth v. Briggs, 33 Mass. (16 Pick.) 203

"In general, as the Father is by law clearly entitled to the custody of his child, the court will so far interfere as to issue the writ of Habeas Corpus and inquire into the circumstances of the case, in order to prevent a party entitled to the custody of a child from seeking it by force or stratagem. And the court will feel bound to restore the custody to the father, where the law has placed it, unless in a clear and strong case of unfitness on his part to have such custody."

¹ in His Proper Person

2.) At the heart of this matter is that the Commonwealth v. Briggs
relied on 'Common Law property' rights.

3.) Children were the property of their parents; **with all the
protections of property, and more.**

4.) Under Common Law a Father could only be deprived of his Common
Law property rights with a showing of abuse or neglect.

5.) At no time have the Massachusetts Courts shown how or why this
is no longer the rule of law.

6.) Hence, I contend that Massachusetts has engaged in "unlawful
taking of property"; a Federal issue².

7.) That the Habeas Corpus motion was denied and in the interest
of obtaining basic justice and understanding of the denial, I
submitted an Order to Show Cause.

8.) As I understand it, the Order to Show Cause is a Writ of
Right.

9.) That right has been denied without explanation.

10.) The Order to Show Cause was lawfully served on the Respondents
on or about October 7th.

11.) Said writ has been summarily denied without a hearing or
explanation by the Supreme Judicial Court.

12.) At no time was your Petitioner allowed to present oral
arguments for the underlying motions or for the Order to Show
Cause.

² United States Constitution – Article V: "...nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

13.) Judge Donnelly used grandparent visitation, tender years doctrine, and irrelevant case cites to dismiss the underlying pleadings. [Enclosure 1]

14.) Petitioner's initial pleadings to the Supreme Judicial Court included your Petitioner's pro se/in propria persona/non-attorney analysis of the case cites in Judge Donnelly's dismissal. [Enclosure 2]

15.) No comment or rebuttal from any court has ever been received on this analysis.

16.) The November 24th letter [Enclosure 3] from Judge Ireland states:

... it is ORDERED that the petition and all included motions be, and the same hereby are, denied without hearing. (Ireland, J)"

17.) The December 15th letter [Enclosure 4] likewise states:

"... it is ORDERED that the request be, and the same hereby is, denied. (Ireland J.)"

18.) That the original motion, per U.S. v. Green, contained under the PRAYER FOR RELIEF required the following:

"That this court remit a timely written answer to me in accordance with law; *in the first instance of this matter* 1 Watts 67, showing substantive findings of facts and conclusions of law in which the Habeas Corpus will be an immediate remedy to your petitioner and that this court instantly issue said Writ of Habeas Corpus in my favor, in accordance with the law, or provide me with written response within 15 days of service of this document showing a substantive Findings of Facts and Conclusions of Law in consonance with the Constitution of Massachusetts (1780) or in the alternative why it has been denied."

This requirement has never been met.

19.) None of the denials todate has met the FINDINGS OF FACTS AND CONCLUSIONS OF LAW, with settled law and VALID legal citations supporting the Constitution for the Commonwealth of Massachusetts, 1780.

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20.) Nor has any denial refuted the Commonwealth v. Briggs case law.

Jurisdiction

21.) English/British Common Law is the law of the land (Ignorance of the law is no excuse is a Common Law maxim).

22.) Since children are 'Common Law property' then the questions are:

a. Has the Commonwealth properly intruded on a property right (requires strict scrutiny),

b. Did the Commonwealth have any authority to do so (valid statutory changes), and

c. Has the Commonwealth engaged in unlawful taken of property (prohibited by the US Federal Constitution)?

23.) It is this last question along with the outright denial of due process, and lack of answer the question of jurisdiction that invokes the jurisdiction of this court.

24.) Massachusetts had a chance to answer these fundamental issues and has been silent.

25.) Additionally Judge Donnelly, has stated that Common Law is not relevant in Probate Court.

Parties

26.) I am the aggrieved and damaged party in this matter, named³ Mark Cimini; the lawful father to my children and, per Common

³ APPELLA'TION, n. [L. appellatio. See Appeal.] Name; the word by which a thing is called and known. Spenser uses it for appeal. Websters 1828 Dictionary.

1 Law, my son is Common Law property or alternately stated my
 2 relationship to him is given **all the protections of property**
 3 **and more**; I am not an incompetent person; I have never been
 4 accused of abusing or neglecting my children; I am a Common
 5 Law Citizen of the Commonwealth of Massachusetts invoking his
 6 natural, Common Law, and/or civil rights.

7 15.) Margaret Cimini is in fact, an incompetent feme sole⁴ female
 8 of the age of majority, a white female adult with unclean
 9 hands⁵, who acted immorally and committed adultery against me
 10 and other bad faith acts and/or omissions and my children, an
 11 egregious damage to my family; has allowed abuse and neglect of
 12 my son Jonathan; Respondent lives within the County of
 13 Middlesex State of Massachusetts and was present within the
 14 county for all acts and/or omissions in this matter and comes
 15 within this courts jurisdiction.

16 16.) Respondent Middlesex County Probate & Family Court is a
 17 division of a department of the trial court of the
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 20
 21

22 ⁴ "Feme sole or Feme-sole. A single woman; one who has never been married, who has been judicially separated
 23 from her husband, or whose marriage has been dissolved by divorce from, or by the death of, the husband. A
 24 married woman who, in matters of property, is independent of her husband, is a feme sole as to such property, and
 25 may deal with it as if she were unmarried." *Taylor v. Meads*, 34 L.J. Ch. 207 (1865)

⁵ "The doctrine [of unclean hands] promotes justice by making a [respondent] answer for his own misconduct in
 the action. It prevents "a wrongdoer from enjoying the fruits of his transgression." [Respondent's] must come
 into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his
 claim." *Kendall-Jackson Winery, Ltd. v. Superior Court* (E. & J. Gallo Winery) (1999) 76 Cal.App.4th 970.

Commonwealth of Massachusetts and includes Judge Donnelly, who was at all relevant times accountable to your petitioner⁶.

17.) Respondent Supreme Judicial Court is a division of a department of the trial courts of the Commonwealth of Massachusetts and includes Judge Ireland, who was at all relevant times accountable to your petitioner⁶.

Issues

27.) To repeat, your Petitioner has asked the Commonwealth courts for actions in agreement with Commonwealth v. Briggs, 33 Mass. (16 Pick.) 203

28.) The Commonwealth has not provided an answer to the fundamental Common Law and Constitutional questions:

a. Who has Common Law title to my son Jonathan?,

b. By what right does the Commonwealth mandate I treat my two children differently, e.g., is my daughter a 'child of a lesser god, or entitled to less Constitutional protections because of the order of her birth?,

c. Have the changes in 'Family Law' since Commonwealth v. Briggs adhered to the Federal mandates of

i. showing a compelling need to change,

ii. done so in the least intrusive manner, and

iii. offered remedy or just compensation per Federal Constitutional mandate?

⁶ Com. v. Ellis, 429 Mass. 362, 371 (1999): "Article 5 [in Part the First, the Declaration of Rights of the Constitution of the Commonwealth of Massachusetts], . . . provides that officers [including judges] of government are at all times accountable to [the people]."

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1 d. Does the Commonwealth have the right to redefine property
2 in a Constitutional Republic; take property without
3 compensation; hold said property for ransom, i.e., child
4 support?

5 e. Since the Constitution (State or Federal) is not a grant of
6 powers but a limit of powers by what right does the
7 Commonwealth redefine family from the Common Law
8 definitions and protections?

9 f. Since the government demands a separation of church and
10 state and the church is a moral authority, not the state,
11 by what right does the government change laws that effect
12 moral values; alternatively stated, what religion is the
13 state imposing on its citizens?

14 g. If the right to children is not an unalienable right, what
15 is an unalienable right?

16 29.) Whereas, these courts had a duty and obligation to me to
17 answer the fundamental questions and not summarily dismiss the
18 pleading without any explanation.

19 30.) At no time during these proceedings has the Commonwealth shown
20 that this cite has been ruled unconstitutional or void.
21 Instead they have used void, unconstitutional, and irrelevant
22 case law in Probate and Family Court and summarily dismissed
23 the pleadings in the Supreme Judicial Court.

24 31.) Your Petitioner as pro se/in propria persona/non-attorney has
25 been unjustly and erroneously held to strict construction of

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the law, and has in fact, been held to an incredibly conservative construction, to my detriment. Your Petitioner must obtain, and is entitled to, liberal construction of the law.

32.) That the Respondents' malingering and bad faith is clearly done to thwart and pervert the course of justice.

Transgressions by the Courts

33.) In the initial paperwork, there was a monetary prayer for relief in the original Habeas Corpus, a request for return of my child (Common Law protections of 'property') and return of Common Law rights, yet Judge Donnelly stated that the petition was "... **DISMISSED** without a hearing for a failure to state a claim upon which relief may be granted."

34.) There were, by my count, at least three claims upon which relief could be granted; property, rights, and money.

35.) By summarily denying the Order to Show Cause, Judge Ireland did not provide due process to your Petitioner; thus did not exercise proper jurisdiction⁷.

36.) Judge Donnelly did not have clear jurisdiction⁷ to deny the Habeas Corpus; did not provide due process; did deny your Petitioner's rights; did use void and unconstitutional cites to dismiss the original Habeas Corpus.

⁷ A judgement is void if it not consistent with Due Process of law. Orner v. Shalala, 30 F.3d 1307, 1308 (1994); V.T.A., Inc. V. Airco, Inc., 597 F.2d 220, 221 (1979). A judgement reached without due process of law is without jurisdiction and thus

1 37.) Given that the court has repeatedly failed to act or even
2 consider providing appropriate relief, and that grievous
3 errors have become commonplace in the motion court, the
4 extraordinary relief provided by mandamus is appropriate.

5 38.) That my substantive due process of law rights have not been
6 provided to the your Petitioner's Habeas Corpus in any of the
7 actions by any court in the Commonwealth of Massachusetts
8 todate.

9 39.) Judge Ireland and Judge Donnelly had a requirement under their
10 oath of office to give valid and appropriate statutory and
11 Constitutional law and LEGALLY SHOW how a Constitutional
12 birthright has been denied to your Petitioner. This has not
13 been done.

14 40.) Judge Ireland and Judge Donnelly have not met their duty and
15 solemn oath and duty to me to provide any answer that shows
16 any alignment with Constitution and Common Law.

17 41.) This court has also failed to provide the necessary level of
18 review of Pro Se/In Propria Persona, Sui Juris/non-lawyer
19 filings per White v. Bloom, 621 F.2d 276 and Bonner v. Circuit
20 Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1995).

21 42.) Respondent's refusal to properly answer the aforementioned
22 motions is an overt act of bad faith.

23 43.) Your Petitioner's paperwork has shown a historical basis for
24 children under Common Law being given all the **protections of**
25

void. Bass v. Hoagland, 172 F. 2d 205, 209 (1949) Any motion for relief from a void judgment is timely regardless of when it
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1 **property and more**, yet the Commonwealth has not shown why they
2 have redefined or taken 'Common Law property' without due
3 process, proper jurisdiction, or just compensation.

4 44.) Unlawful taking of (Common Law) property is a Federal
5 Constitutional issue and has been ignored by the state courts.

6 45.) Your petitioner has raised the question in the underlying
7 motions but the Commonwealth has failed to show how a Common
8 Law right of property, previously adjudicated in, I believe,
9 Superior Court, came to be adjudicated in a court of equity
10 without the option of a jury trial, i.e., dispute of Common
11 Law property valued over twenty dollars.

12 46.) No answer regarding the issue of jurisdiction has been
13 provided to your Petitioner⁸.

14 47.) As I understand it, the Commonwealth's courts erred when they
15 dismissed the pleadings of a non-attorney litigant without
16 instruction of how pleadings are deficient and how to repair
17 pleading.

18 48.) It is becoming increasingly apparent that the courts of the
19 Commonwealth of Massachusetts are ultimately relying on
20 *Argumentum ad Baculum*⁹ rather than on the concise rule of law,
21 due process, Constitutional principals, and Common Law
22 mandates.

23
24
25 is filed. V.T.A., Inc. V. Airco, Inc., supra

⁸ "The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." 100 S. Ct. 2502 (1980)

⁹ Appeal to Force – an informal fallacy of classical logic

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1 49.) Given that these issues clearly encompass both a Federally
2 Protected Zone (of Parenting) and right of property, the
3 Commonwealth courts were expected to fully obey federally
4 mandated laws and rulings, for example:

5 "Statutes and rulings that infringe upon fundamental rights are
6 presumptively unconstitutional, and a substantial burden rests on the
7 state, not the citizen, to prove its case." Harris v. McRae, 448 U.S. 297
(1980).

8 50.) Since the Commonwealth accepts Federal monies, in various
9 forms, for child custody issues and related matters, any claim
10 by the Commonwealth of immunity from federal action is void.

11 51.) It is also an issue that the Commonwealth's zeal for Federal
12 monies is at the very heart of the unconstitutional, biased,
13 and unlawful behavior.

14 52.) The concise rule of law clearly states that I am to receive
15 truth, justice, and due process of law within this matter,
16 which has been cogently and overtly denied to me by aforesaid
17 courts, and all their court officers co-conspirators whom have
18 factually acted in bad faith, with no good faith to your
19 Petitioner, and whom are overtly through open collusion
20 covering up their misconstruction of law, acting in
21 excrescence to the concise rule of law, which they are bound
22 to by oath and affirmation, and their overt acts and omissions
23 against your defendant are an ongoing enterprise to inflict
24 fraud against me. Said Respondents and their surrogate court,
25 in open collusion with the County of Middlesex court officers
using the shield of the Commonwealth of Massachusetts, clothed

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1 under color of law, have willfully inflicted upon me an open
2 fraud committed upon me for the purposes of profit and reward
3 (i.e., maximizing federal remunerations).

4 53.) It has become public knowledge that the courts of the
5 Commonwealth are unfair and biased against male litigants.

6 54.) The rules of procedure, evidence, and Common Law have been
7 shunted aside throughout the proceedings. Given the total lack
8 of due process, only an order by this court -- either to obey
9 Commonwealth v. Briggs case law, to respect Common Law
10 property rights, or to allow a trial de novo in this court --
11 can stop the charade of justice occurring in the Commonwealth
12 courtrooms.

13 55.) Both the Probate judge and SJC judge appears to be unaware of
14 the need not only for due process but also respect for
15 precedence and Common Law. This implies both a lack of respect
16 for the law and an unwillingness to respect the rights of free
17 and sovereign citizens of this Commonwealth.

18 56.) It is a fact that Parental rights predate constitutional laws
19 and children are considered Common Law Property. So, by what
20 right has Massachusetts meddled so drastically in the right's
21 of citizens without remedy or just compensation?
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Prayers for Relief

Wherefore, your Petitioner Mark Cimini comes before the above mentioned court and puts himself upon the law for substantial justice and prays that:

1. The Petitioner's Common Law parental rights be acknowledged and restored by this court.

2. That this court acknowledges the Common Law property issues.

3. The Order to Show Cause must be properly answered by the Massachusetts courts.

4. That this court finds that proper due process nor proper jurisdiction has been establish by the Massachusetts courts in these matters.

57.) That if these pleading, by a non-attorney litigant, are dismissed that this court offer clear instruction(s) of how pleadings are deficient and how to repair the pleading.

It is also requested that this court review any answer from the Massachusetts courts.

DATED: 31 December 2004
SEAL:

Dated this 31 December 2004


Mark Cimini - AT LAW

In Propria Persona, Sui Juris
Middlesex County Judicial District
12 Maple Road
Westford, MA [01886]
(978) 692-4556

Mandamus to District Court of the United States

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VERIFICATION

Middlesex County]
] ss.
Commonwealth of Massachusetts]

I, Mark Cimini, being the undersigned, declare under penalty of perjury as follows:
That the foregoing Document(s), Affidavit(s), Declaration(s), and/or Materials,
Id., including referenced and/or attached documents, and/or duplicates of such
documents are exacting copies of the originals in my possession. That I have read
the foregoing document(s) and attachments, and know and understand their contents,
and having personal knowledge, knows them to be true. As to those matters
submitted therein upon information and/or belief, as to those matters, I also
believe them true.

Executed this 31 December, Two-Thousand-Four.

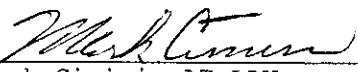
SEAL:


Mark Cimini- AT LAW
Pro Se/In Propria Persona, Sui Juris
Middlesex County Judicial District
12 Maple Road
Westford, MA [01886]
(978) 692-4556

SUBSCRIPTION

Subscribed this 31 December 2004, under exigent circumstances.

SEAL:


Mark Cimini- AT LAW
Pro Se/In Propria Persona, Sui Juris
Reserving All Rights, Giving Up None

District Court of the United States
Massachusetts Division

Mark Cimini
vs.
Petitioner/Plaintiff,

Margaret Cimini,
Middlesex County Probate & Family Court
Judge Edward F. Donnelly,
Massachusetts Supreme Judicial Court
Judge J. Ireland,
Commonwealth of Massachusetts
Respondent(s)/Defendant

Case No.
SJ-2004-0462
97D-4115-DV1

**CERTIFICATION OF SERVICE
AFFIDAVIT OF
PROOF OF SERVICE**

1.) District Court of the United States Mandamus

11 Pages

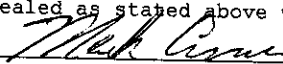
The aforesaid documents were served by the undersigned in the following manner:

- ☒ By the U.S. Postal Service having knowledge of the United States Mail Post paid certified envelope, sealed by my hand at _____
Certified Number _____
- ☒ By sealed envelope, hand enclosed by me and mailed to:
- ☒ By phone communication transmission [FAX], the material aforementioned on-line was sent at a total of _____ transmitted pages to Tel.#() -
- ☐ By personal service IN COURT. I did personally deliver the above-described documents at the address, or addresses captioned below:
- ☐ OTHER:

Ashley Ahearn, Esq., Massachusetts Appeals Court Three Center Plaza, 7th Floor Boston, MA 02108	Susan Jenness US District Court 1 Carthouse Way Sub 230 Boston MA 02210	Judge J. Ireland Massachusetts Appeals Court Three Center Plaza, 7th Floor Boston, MA 02108
John R. Buonomo Middlesex Family and Probate Court 208 Cambridge Street East Cambridge, MA 02141-0006 (617) 768-5850	Margaret Cimini 5 Sand Beach Road Westford, MA 01886 (978) 392-1942	Judge/Justice Edward F. Donnelly Middlesex Family and Probate Court 208 Cambridge Street East Cambridge, MA 02141-0006 (617) 768-5850

Further, I declare under penalty of perjury knowing the laws thereof within the Commonwealth of Massachusetts that the foregoing is true and correct and that these documents were served by me personally as stated above and/or mailed and sealed as stated above within the California Republic.

DATED: _____, 2004
_____ AM/PM


Name: Mark Cimini -By Lawful Service
12 Maple Road
Westford, MA 01886

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